

Exhibit 7

Don Apodaca**UNITED STATES DISTRICT COURT
STATE OF MARYLAND**

**IN RE MICROSOFT CORP.) Civil Action No.:
ANTITRUST LITIGATION) JFM-02-CV-2952**

BURST.COM, INC.,)

Plaintiff,)

vs.)

MICROSOFT CORP.,)

Defendant.)

**DEPOSITION OF:
Don Apodaca**

**MONDAY, DECEMBER 8, 2003
12:30 p.m.**

**REPORTED BY:
Bill Ionescu, CSR 11417**

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**Examined by: Page
Mr. Sonnenchein 6**

EXHIBITS

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A-1	E-mail from YWWI-Strategic Resumes to don@burst.com with attachment	11
A-2	E-mail to multiple recipients with attached presentation	14
A-3	E-mail with Excel attachment and reply chain	20
A-4	E-mail with Power Point attachment and reply chain	29
A-5	E-mail to multiple recipients titled "InterVu Update, 2-15-00"	33
A-6	E-mail with reply chain	36
A-7	E-mail from D. Apodaca to D. Egan	38
A-8	E-mail from D. Apodaca to R. Sanchez with attachment	42
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A-11	E-mail with reply chain	53
A-12	E-mail with reply chain	56
A-13	E-mail to multiple recipients	58
A-14	Supplemental Responses of Burst.com, Inc., to Second Set of Interrogatories	60

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LET IT BE KNOWN THAT Don Apodaca did offer sworn testimony in deposition before Bill Ionescu, Certified Shorthand Reporter 11417 for the State of California, commencing at 12:30 p.m. on Monday, December 8, 2003, at the Hilton Waterfront Beach Resort, Anaheim Room, located at 21100 Pacific Coast Highway, Huntington Beach, State of California.

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ALSO PRESENT: Tim Nolan, Video Operator

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A-18	E-mail with reply chain	76
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LegalLink San Francisco (415) 359-2040

Don Apodaca

1	Q. Were you involved with the ongoing sales efforts	12:39:14	1	Q. Do you know what those options were worth, say,	12:42:15
2	of Internet?	12:39:17	2	three years ago?	12:42:19
3	A. No.	12:39:18	3	A. No.	12:42:20
4	Q. And you became an independent contractor to Burst	12:39:19	4	MR. SONNENSCHN: The court reporter will mark	12:42:45
5	after November of 2000, is that what you stated?	12:39:23	5	as Exhibit A-1 an e-mail and attachment that contains the	12:42:47
6	A. Yes.	12:39:25	6	Bates number starting at BUR-0180405 and running through	12:43:05
7	Q. What was the nature of that arrangement?	12:39:26	7	BUR-0180408.	12:43:15
8	A. Commission only.	12:39:30	8	(Exhibit A-1 is marked for identification.)	12:43:32
9	Q. When your employment with Burst ended in November	12:39:41	9	BY MR. SONNENSCHN:	12:43:32
10	of 2000, what did you do with the documents that you had	12:39:45	10	Q. Okay. On the first page of Exhibit A-1 is an	12:43:56
11	created or received as an employee of Burst.com?	12:39:47	11	e-mail from "YWWI-Strategic Resumes," sent November 16th,	12:44:00
12	A. What did I do with the documents --	12:39:55	12	2000, to Don at Burst.com, subject, "Don Apodaca completed	12:44:09
13	Q. Well, e-mails, things like that.	12:39:58	13	resumes."	12:44:15
14	A. I have some files that I used for ongoing sales	12:40:04	14	Mr. Apodaca, do you recognize this document?	12:44:16
15	as an independent contractor. I threw a lot of it away.	12:40:10	15	A. I recognize the contents.	12:44:36
16	Q. When did you throw that away, those files away?	12:40:16	16	Q. Okay.	12:44:39
17	A. I threw some away right after the formative	12:40:21	17	A. I don't -- is this a service, I guess? I don't	12:44:40
18	change in the operations of the company; some,	12:40:28	18	remember if I engaged -- I might have engaged a resume	12:44:44
19	periodically, over time. I still have some.	12:40:32	19	writing service to tailor this. I don't recall. But the	12:44:50
20	Q. You still have some files in your possession?	12:40:38	20	contents are familiar, yes.	12:44:55
21	A. Yes.	12:40:40	21	Q. Okay. I'd like to focus your attention on the	12:44:56
22	Q. Are they at your residence, those files?	12:40:41	22	portion of your resume on the second page of Exhibit A-1,	12:45:01
23	A. Some.	12:40:47	23	which contains the Bates number BUR-0180406. About middle	12:45:10
24	Q. And where are the other files that you still have	12:40:48	24	down the page it says, "Regional sales manager, 2000 to	12:45:20
25	in your possession?	12:40:51	25	the present." On the fourth bullet point to this page it	12:45:24
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1	A. I don't know if I have any in storage. I had --	12:40:51	1	says, "Ranked number one in sales of hosting services."	12:45:27
2	I don't think I have any in storage, but I can't say that	12:41:03	2	So I take it, from this document, that you were	12:45:39
3	for 100 percent certain.	12:41:07	3	Burst.com's number one salesperson for hosting services?	12:45:45
4	Q. Okay. Do you have any financial interest in	12:41:08	4	A. It was a -- I was one of the very few that even	12:45:52
5	Burst.com?	12:41:12	5	attempted to sell the hosting services as provided, as a	12:46:00
6	A. I don't know.	12:41:16	6	distinction from soliciting business or actually selling	12:46:09
7	Q. Did you at any time own either stock or stock	12:41:19	7	the license for Burst products. The hosting service was	12:46:13
8	options in Burst.com?	12:41:23	8	an ASP model that was formative -- in the formative	12:46:21
9	A. Yes.	12:41:24	9	stages, rolling out, and I was one of the few that secured	12:46:27
10	Q. Did you sell those options -- I'm sorry. What	12:41:25	10	service contracts for the use of that.	12:46:31
11	did you have, stock in Burst.com?	12:41:34	11	The scale of it was small. "Number one ranking"	12:46:35
12	A. I had options.	12:41:36	12	is just from my familiarity in selling it compared to my	12:46:43
13	Q. Did you exercise those options?	12:41:38	13	peers. I'm the one that had more business than anybody	12:46:48
14	A. No.	12:41:40	14	else generated with this type of revenue generating	12:46:51
15	Q. So you still have options in Burst.com?	12:41:43	15	activity.	12:46:54
16	A. I don't know the state of those options in light	12:41:47	16	Q. Okay.	12:46:55
17	of their change of ownership structure in the last three	12:41:54	17	A. It was not a ranking that came from sales	12:46:55
18	years.	12:41:59	18	management down to the troops, so to speak.	12:47:04
19	Q. Okay.	12:42:00	19	Q. Okay. Now, you said that many of your colleagues	12:47:12
20	A. It was not preferred stock.	12:42:01	20	had not attempted to sell Burst's hosting services; is	12:47:14
21	Q. Okay. Do you have any idea what those options	12:42:03	21	that correct?	12:47:21
22	are worth?	12:42:11	22	A. I was more active -- I don't know -- I couldn't	12:47:21
23	A. Currently?	12:42:12	23	tell you specifically, from recollection, as to the degree	12:47:29
24	Q. Currently.	12:42:14	24	of effort my peers made in that regard.	12:47:33
25	A. No.	12:42:14	25	Q. You mentioned something about an ASP model.	12:47:35
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